

9 FAM 42.42 PETITIONS FOR IMMEDIATE RELATIVE OR PREFERENCE STATUS

(TL:VISA-101; 11-25-94)

The consular officer may not issue a visa to an alien as an immediate relative entitled to status under 201(b), a family-sponsored immigrant entitled to status under 203(a)(1)-(4), or employment-based preference immigrant entitled to status under INA 203(b)(1) - (5), unless the officer has received a petition filed and approved in accordance with INA 204 or official notification of such filing and approval.

[56 FR 49682, Oct. 1, 1991]

9 FAM 42.42 Related Statutory Provisions

INA 204, in part

(TL:VISA-112; 5-26-95)

Sec. 204. (a)(1)(A)(i) Any citizen of the United States claiming that an alien is entitled to classification by reasons of a relationship described in paragraph (1), (3), or (4) of section 203(a) or to an immediate relative status under section 201(b)(2)(A)(i) may file a petition with the Attorney General for such classification.

(ii) An alien spouse described in the second sentence of section 201(b)(2)(A)(i) also may file a petition with the Attorney General under this subparagraph for classification of the alien (and the alien's children) under such section.

(iii) An alien who is the spouse of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), and who has resided in the United States with Alien's spouse may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien if such child has not been classified under clause (iv)) under such section if the alien demonstrates to the Attorney General that—

(I) the alien is residing in the United States, the marriage between the alien and the spouse was entered into in good faith by alien, and during the marriage the alien or a child of the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's spouse; and

(II) the alien is a person whose deportation, in the opinion of the Attorney General, would result in extreme hardship to the alien or a child of the alien

(iv) An alien who is the child of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), and who has resided in the United States with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien under such section if the alien demonstrates to the Attorney General that—

(I) the alien is residing in the United States and during the period of residence with the citizen parent the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent; and

(II) the alien is a person whose deportation, in the opinion of the Attorney General, would result in extreme hardship to the alien.

(B)(i) Any alien lawfully admitted for permanent residence claiming that an alien is entitled to classification by reason of the relationship described in section 203(a)(2) may file a petition with the Attorney General for such classification.

(ii) An alien who is the spouse of an alien lawfully admitted for permanent residence, who is a person of good moral character, who is eligible for classification under section 203(a)(2)(A), and who has resided in the United States with the alien's legal permanent resident spouse may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien if such a child has not been classified under (iii) under such section if the alien demonstrates to the Attorney General that the conditions described in subclauses (I) and (II) of subparagraph (a)(iii) are met with respect to the alien.

(iii) An alien who is the child of an alien lawfully admitted for permanent residence, who is a person of good moral character, who is eligible for classification under section 203(a)(2)(A), and who has resided in the United States with the alien's permanent resident alien parent may file a petition with the Attorney General under this subparagraph for classification of the alien under such section if the alien demonstrates to the Attorney General that—

(I) the alien is residing in the United States and during the period of residence with the permanent resident parent the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent; and

(II) the alien is a person whose deportation, in the opinion of the Attorney General, would result in extreme hardship to the alien.

(C) Any alien desiring to be classified under section 203(b)(1)(A), or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

(D) Any employer desiring and intending to employ within the United States an alien entitled to classification under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) may file a petition with the Attorney General for such classification.

(E)(i) Any alien (other than a special immigrant under section 101(a)(27)(D)) desiring to be classified under section 203(b)(4), or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

(ii) Aliens claiming status as a special immigrant under section 101(a)(27)(D) may file a petition only with the Secretary of State and only after notification by the Secretary of State that such status has been recommended and approved pursuant to such section.

(F) Any alien desiring to be classified under section 203(b)(5) may file a petition with the Attorney General for such classification.

(G)(i) Any alien desiring to be provided an immigrant visa under section 203(c) may file a petition at the place and time determined by the Secretary of State by regulation. Only one such petition may be filed by an alien with respect to any petitioning period established. If more than one petition is submitted all such petitions submitted for such period by the alien shall be voided.

(ii)(I) The Secretary of State shall designate a period for the filing of petitions with respect to visas which may be issued under section 203(c) for the fiscal year beginning after the end of the period.

(II) Aliens who qualify, through random selection, for a visa under section 203(c) shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.

(III) The Secretary of State shall prescribe such regulations as may be necessary to carry out this clause.

(iii) A petition or registration under this subparagraph shall be in such form as the Secretary of State may by regulation prescribe and shall contain such information and be supported by such documentary evidence as the Secretary of State may require.

(H) In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), the Attorney General shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

[Amended by sec. 40701 of Pub. L. 103-322; Sep. 13, 1994.]

204(a)(2)(A) The Attorney General may not approve a spousal second preference petition for the classification of the spouse of an alien if the alien, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence unless—

(i) a period of 5 years has elapsed after the date the alien acquired the status of an alien lawfully admitted for permanent residence, or

(ii) the alien establishes to the satisfaction of the Attorney General by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence) was not entered into for the purpose of evading any provision of the immigration laws.

(B) Subparagraph (A) shall not apply to a petition filed for the classification of the spouse of an alien if the prior marriage of the alien was terminated by the death of his or her spouse.

[Amended by sec. 40701 of Pub. L. 103-322, September 13, 1994.]

204(h) The legal termination may not be the sole basis for revocation under section 205 of a petition filed under subsection (a)(1)(A)(iii) or a petition filed under subsection (a)(1)(B)(ii) pursuant to conditions described in subsection (a)(1)(A)(iii)(I).

[Added by sec. 40701 of Pub. L. 103-322, Sep. 13, 1994.]

(TL:VISA-48; 10-1-91)

For the provisions of INA 201(b)(2)(A)(i) see 9 FAM 42.21 Related Statutory Provisions.

(TL:VISA-48; 10-1-91)

For the provisions of INA 203(a)(1), (2), (3) and (4) see 9 FAM 42.31 Related Statutory Provisions.

(TL:VISA-48; 10-1-91)

For the provisions of INA 203(b)(1)(B) and (C) see 9 FAM 42.32(a) Related Statutory Provisions.

(TL:VISA-48; 10-1-91)

For the provisions of INA 203(b)(2) see 9 FAM 42.32(b) Related Statutory Provisions.

(TL:VISA-48; 10-1-91)

For the provisions of INA 203(b)(3) see 9 FAM 42.32(c) Related Statutory Provisions.

(TL:VISA-48; 10-1-91)

For the provisions of INA 203(b)(4) see 9 FAM 42.32(d)(1) Related Statutory Provisions - 9 FAM 42.32(d)(6) Related Statutory Provisions

(TL:VISA-48; 10-1-91)

For the provisions of INA 203(b)(5) see 9 FAM 42.32(e) Related Statutory Provisions.

INA 245, in part

(TL:VISA-112; 5-26-95)

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE.

Sec. 245. (a) The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General...

(e)(1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).

(2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to enter or remain in the United States.

(3) Paragraph (1) and section 204(h) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's entry as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under 204(a) or 214(d) with respect to the alien spouse or alien son or daughter. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

[Amended by sec. 702 of Pub. L. 101-649, Nov. 29, 1990.]